No. 94-1039

Supreme Court, U.S.
FILED
JUN 19 1995
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ROY ROMER, as Governor of the State of Colorado, and the STATE OF COLORADO,
Petitioners,
v.
RICHARD G. EVANS, ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, PRISCILLA INKPEN, JOHN MILLER, the BOULDER VALLEY SCHOOL DISTRICT RE-2, the CITY AND COUNTY OF DENVER, the CITY OF BOULDER, the CITY OF ASPEN, and the CITY COUNCIL OF ASPEN,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Colorado

BRIEF *AMICUS CURIAE* OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION, THE AMERICAN PSYCHIATRIC ASSOCIATION, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC., AND THE COLORADO PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF RESPONDENTS

RICHARD G. TARANTO
FARR & TARANTO
2445 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184
Counsel for Amicus American Psychiatric Association

CAROLYN I. POLOWY
General Counsel
NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.
750 First Street, N.E.
Washington, D.C. 20002
(202) 408-8600
Counsel for Amicus National Association of Social Workers, Inc.

PAUL M. SMITH *
JENNER & BLOCK
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 639-6000

JAMES L. MCHUGH, JR.
General Counsel
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street, N.E.
Washington, D.C. 20002
(202) 336-5500
Counsel for Amici American Psychological Association and Colorado Psychological Association

* Counsel of Record

WILLIAMS • EVANS PRINTING CO., INC. • 789-0096 • WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE	1
STATEMENT OF FACTS	5
INTRODUCTION AND SUMMARY OF ARGUMENT	7
ARGUMENT	9
I. THE NATURE OF SEXUAL ORIENTATION	9
A. The Definition Of Sexual Orientation	9
B. The Prevalence Of Homosexual Orientation	11
C. The Development Of Sexual Orientation	12
D. Can Sexual Orientation Be Changed?	14
E. Homosexuality Is Not A Disorder And Does Not Affect One's Ability To Contribute To Society	15
II. GAY PEOPLE HAVE LONG FACED INTENSE PREJUDICE AND DISCRIMINATION BASED ON IGNORANCE AND STEREOTYPES	18
A. History And Prevalence Of Prejudice And Discrimination Against Gay People	19
B. The Nature Of Anti-Gay Prejudice	22
C. Effects Of Prejudice And Discrimination	24
CONCLUSION	27

TABLE OF AUTHORITIES

CASES — Page

Boutilier v. Immigration & Naturalization Service, 387 U.S. 118 (1967) 21
City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985) 7-8
Heller v. Doe, 113 S. Ct. 2637 (1993) 7
Hunter v. Erickson, 393 U.S. 385 (1969) 6-7
Palmore v. Sidoti, 466 U.S. 429 (1984) 8
Pruitt v. Cheney, 963 F.2d 1160 (9th Cir. 1991), *cert. denied*, 113 S. Ct. 655 (1992) 7
Reynolds v. Sims, 377 U.S. 533 (1964) 6
Stanton v. Stanton, 421 U.S. 7 (1975) 8
United States v. Lallemand, 989 F.2d 936 (7th Cir. 1993) 26
USDA v. Moreno, 413 U.S. 528 (1973) 8
Watkins v. United States Army, 875 F.2d 699 (9th Cir. 1989), *cert. denied*, 498 U.S. 957 (1990) 18
Zobel v. Williams, 457 U.S. 55 (1982) 8

STATUTES

Colo. Rev. Stat., Const. art. II, § 30b (1994 Supp.) ..*passim*
8 U.S.C. § 1182(a) (4) (1988) 21
42 U.S.C. § 1983 6

MISCELLANEOUS

Joseph E. Aguero, Laura Bloch & Donn Byrne, *The Relationships Among Sexual Beliefs, Attitudes, Experience, and Homophobia*, 10 J. Homosexuality 95 (1984) 22-23
American Bar Association Report No. 8, House of Delegates (1989) 5
148 Am. J. Psychiatry 552 (1991) 4
148 Am. J. Psychiatry 1625 (1991) 4
149 Am. J. Psychiatry 724 (1992) 4
150 Am. J. Psychiatry 686 (1993) 4
American Medical Association, *Reports of Board of Trustees*, Annual Meeting of the House of Delegates (1993) 5
American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-II)* (6th prtg. 1974) 3

TABLE OF AUTHORITIES—Continued

Page

American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* (1st prtg. 1994) 15
American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620 (1975) 2-3, 15
American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 32 Am. Psychologist 408 (1977) 3
American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 36 Am. Psychologist 552 (1981) 3
American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 43 Am. Psychologist 527 (1988) 3
American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 44 Am. Psychologist 1026 (1988) 3
American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 49 Am. Psychologist 628 (1994) 3
M.V. Lee Badgett, Colleen Donnelly & Jennifer Kibbe, *Pervasive Patterns of Discrimination Against Lesbians and Gay Men: Evidence from Surveys Across the United States* (1992) 21-22
J. Michael Bailey & Deana S. Benishay, *Familial Aggregation of Female Sexual Orientation*, 150 Am. J. Psychiatry 272 (1993) 13
J. Michael Bailey, David Bobrow, Marilyn Wolfe & Sarah Mikach, *Sexual Orientation of Adult Sons of Gay Fathers*, 31 Developmental Psychol. 124 (1995) 18
J. Michael Bailey & Richard C. Pillard, *A Genetic Study of Male Sexual Orientation*, 48 Archives Gen. Psychiatry 1089 (1991) 13
J. Michael Bailey, Richard C. Pillard, Michael C. Neale & Yvonne Agyei, *Heritable Factors Influence Sexual Orientation In Women*, 50 Archives Gen. Psychiatry 217 (1993) 13

TABLE OF AUTHORITIES—Continued

Page

J. Michael Bailey & Kenneth J. Zucker, *Childhood Sex-Typed Behavior and Sexual Orientation: A Conceptual Analysis and Quantitative Review*, 31 Developmental Psychol. 43 (1955) 12

Morton Bard & Dawn Sangrey, *The Crime Victim's Book* (1986) 25

Alan P. Bell & Martin S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* (1978) 17, 26

Alan P. Bell, Martin S. Weinberg & Sue Kiefer Hammersmith, *Sexual Preference: Its Development in Men and Women* (1981) 12-14

Kevin T. Berrill, *Anti-Gay Violence and Victimization in the United States: An Overview*, in *Hate Crimes: Confronting Violence Against Lesbians and Gay Men* (Gregory M. Herek & Kevin T. Berrill eds., 1992) 21-22

Allan Berube, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (1990) 20

Ray Blanchard, Kenneth J. Zucker, Susan J. Bradley & Caitlin S. Hume, *Birth Order and Sibling Sex Ratio in Homosexual Male Adolescents and Probably Prehomosexual Feminine Boys*, 31 Developmental Psychol. 22 (1995) 14

John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (1980) 19

Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, 18 J. Homosexuality 137 (1989), *reprinted in Psychological Perspectives on Lesbian and Gay Male Experiences* (Linda D. Garnets & Douglas C. Kimmel eds., 1993) 18

Samuel Brakel, John Parry & Barbara Weiner, *The Mentally Disabled and the Law* (3d ed. 1985) 20

William Byne & Bruce Parsons, *Human Sexual Orientation: The Biologic Theories Reappraised*, 50 Archives Gen. Psychiatry 228 (1993) 9-10, 14

TABLE OF AUTHORITIES—Continued

Page

George A. Chauncey, Jr., *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (1994) 20

Gary David Comstock, *Violence Against Lesbians and Gay Men* (1991) 22

John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* (1983) 20

Milton Diamond, *Homosexuality and Bisexuality in Different Populations*, 22 Archives Sexual Behav. 291 (1992) 10

Lynda S. Doll, Lyle R. Petersen, C.R. White, E.S. Johnson, J.W. Ward & The Blood Donor Study Group, *Homosexually and Nonhomosexually Identified Men Who Have Sex with Men: A Behavioral Comparison*, 29 J. Sex Res. 1 (1992) 10

Murray J. Edelman, *Understanding the Gay and Lesbian Vote in '92*, Pub. Persp., Mar.-Apr. 1993 12

Stuart Elliott, *A Sharper View of Gay Consumers*, N.Y. Times, June 9, 1994, at D-1 12

Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (1991) 20

Robert E. Fay, Charles F. Turner, Albert D. Klassen & John H. Gagnon, *Prevalence and Patterns of Same-Gender Sexual Contact Among Men*, 243 Science 338 (1989) 11

David K. Flaks, Ilda Ficher, Frank Masterpasqua & Gregory Joseph, *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 Developmental Psychol. 105 (1995) 17

Mark Freedman, *Homosexuality and Psychological Functioning* (1971) 17

Kurt Freund, Robin Watson & Douglas Rienzo, *Heterosexuality, Homosexuality, and Erotic Age Preference*, 26 J. Sex. Res. 107 (1989) 24

TABLE OF AUTHORITIES—Continued

Page

Linda D. Garnets, Gregory M. Herek & Barrie Levy, *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 J. Interpersonal Violence 366 (1990), *reprinted in Psychological Perspectives on Lesbian and Gay Male Experiences* (Linda D. Garnets & Douglas C. Kimmel eds., 1993) 25-26

Gay and Lesbian Youth (Gilbert Herdt ed., 1989) .. 25

John C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) 16-17, 20

John C. Gonsiorek, *Mental Health Issues of Gay and Lesbian Adolescents*, 9 J. Adolescent Health Care 114 (1988) 25, 27

John C. Gonsiorek, *Results of Psychological Testing on Homosexual Populations*, 25 Am. Behavioral Sci. 385 (1982) 16-17

John C. Gonsiorek & James R. Rudolph, *Homosexual Identity: Coming Out and Other Developmental Events* in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) 27

John C. Gonsiorek & James D. Weinrich, *The Definition and Scope of Sexual Orientation*, in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) 2, 9

G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers*, in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) 17

Richard Green, *The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis*, 16 J. Psychiatry & L. 537 (1988) 12

Richard Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 Am. J. Psychiatry 692 (1978) 17-18

TABLE OF AUTHORITIES—Continued

Page

Richard Green, *The "Sissy Boy Syndrome" and the Development of Homosexuality* (1987) 12

A. Nicholas Groth & H. Jean Birnbaum, *Adult Sexual Orientation and Attraction to Underage Persons*, 7 Archives Sexual Behav. 175 (1978) .. 24

Douglas C. Haldeman, *The Practice and Ethics of Sexual Orientation Conversion Therapy*, 62 J. Consulting & Clinical Psychol. 221 (1994) 10, 15

Douglas C. Haldeman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination*, in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) .. 15, 20

Dean H. Hamer, Stella Hu, Victoria L. Magnuson, Nan Hu & Angela M.L. Pattatuci, *A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation*, 261 Science 321 (1993) 13

Maureen Hart, Howard Roback, Bennett Tittler, Larry Weitz, Barbara Walston & Embry McKee, *Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature*, 39 J. Clinical Psychiatry 604 (1978) 16-17

Hate Crimes: Confronting Violence Against Lesbians and Gay Men (Gregory M. Herek & Kevin T. Berrill eds., 1992) 21-22

Heinz Heger, *The Men with the Pink Triangle* (David Fernbach trans., 1980) 19

Gilbert Herdt & Andrew Boxer, *Children of Horizons: How Gay and Lesbian Teens Are Leading a New Way Out of the Closet* (1993) 25

Gregory M. Herek, *Beyond "Homophobia": A Social Psychological Perspective on Attitudes Toward Lesbians and Gay Men*, 10 J. Homosexuality 1 (1984) 22-23

Gregory M. Herek, *Hate Crimes Against Lesbians and Gay Men: Issues for Research and Policy*, 44 Am. Psychologist 948 (1989) 22

Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 Law & Sexuality 133 (1991) 9, 17-18

TABLE OF AUTHORITIES—Continued

Page

Gregory M. Herek, *Stigma, Prejudice, and Violence Against Lesbians and Gay Men*, in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) 19, 25

Gregory M. Herek & John P. Capitanio, *Black Heterosexuals' Attitudes Toward Lesbians and Gay Men in the United States*, 32 J. Sex Res. 95 (1995) 22

Gregory M. Herek & John P. Capitanio, *"Some of My Best Friends": Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians*, 22 Personality & Soc. Psychol. Bull. (forthcoming 1995) 21-22

Gregory M. Herek & Eric K. Glunt, *Interpersonal Contact and Heterosexuals' Attitudes Toward Gay Men: Results from a National Survey*, 30 J. Sex Res. 239 (1993) 22

Scott L. Hershberger & Anthony R. D'Augelli, *The Impact of Victimization on the Mental Health and Suicidality of Lesbian, Gay, and Bisexual Youths*, 31 Developmental Psychol. 65 (1995) 25

Emery S. Hetrick & A. Damien Martin, *Developmental Issues and Their Resolution for Gay and Lesbian Adolescents*, 14 J. Homosexuality 25 (1987) 23, 26

Evelyn Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. Projective Techs. 18 (1957) 17

Richard A. Isay, *Dynamic Psychotherapy With Gay Men: Developmental Considerations*, 12 Rev. Psychiatry 85 (1993) 15

Carole Jenny, Thomas A. Roesler & Kimberly L. Poyer, *Are Children At Risk for Sexual Abuse by Homosexuals?*, 94 Pediatrics 41 (1994) 24

Dirk Johnson, *Colorado Homosexuals Feel Betrayed*, N.Y. Times, Nov. 8, 1992, at 38 27

Jonathan Ned Katz, *Gay American History: Lesbians and Gay Men in the U.S.A.* (1976) 20

TABLE OF AUTHORITIES—Continued

Page

Alfred C. Kinsey, Wardell B. Pomeroy & Clyde E. Martin, *Sexual Behavior in the Human Male* (1948) 10

Alfred C. Kinsey, Wardell B. Pomeroy, Clyde E. Martin & Paul H. Gebhard, *Sexual Behavior in the Human Female* (1953) 10

Martha Kirkpatrick, Catherine Smith & Ron Roy, *Lesbian Mothers and Their Children: A Comparative Study*, 51 Am. J. Orthopsychiatry 545 (1981) 18

Mary E. Kite, *When Perceptions Meet Reality: Individual Differences in Reactions to Lesbians and Gay Men*, in *Lesbian and Gay Psychology: Theory, Research, and Clinical Applications* (Beverly Greene & Gregory M. Herek eds., 1994) 21, 23

Lawrence A. Kurdek, *The Nature and Correlates of Relationship Quality in Gay, Lesbian and Heterosexual Cohabiting Couples: A Test of the Individual Difference, Interdependence, and Discrepancy Models*, in *Lesbian and Gay Psychology: Theory, Research, and Clinical Applications* (Beverly Greene & Gregory M. Herek eds, 1994) 24

Paul C. Larson, *Gay Male Relationships*, in *Homosexuality: Social, Psychological, and Biological Issues* (William Paul, James D. Weinrich, John C. Gonsiorek & Mary E. Hotvedt eds., 1982) 24

Edward O. Laumann, John H. Gagnon, Robert T. Michael & Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* (1994) ..... *passim*

Simon LeVay, *A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men*, 253 Science 1034 (1991) 13

Simon LeVay, *The Sexual Brain* (1993) 13

Martin P. Levine, *Employment Discrimination Against Gay Men*, 9 Int'l Rev. Mod. Soc. 151 (1979) 22

TABLE OF AUTHORITIES—Continued

Page

Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in the Work Force*, 9 Signs: J. Women Culture & Soc. 700 (1984) 22

David Parr McWhirter & Andrew M. Mattison, *The Male Couple: How Relationships Develop* (1984) 24

Alan K. Malyon, *The Homosexual Adolescent: Developmental Issues and Social Bias*, 60 J. Child Welfare 321 (1981) 26

A. Damien Martin, *Learning to Hide: The Socialization of the Gay Adolescent*, 10 *Adolescent Psychiatry: Developmental & Clinical Studies* (Sherman C. Feinstein, John G. Looney, Allan Z. Schwartzberg & Arthur D. Sorosky eds., 1982) 26

Gary B. Melton, *Public Policy and Private Prejudice*, 44 Am. Psychologist 933 (1989) 20

Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. Health & Soc. Behav. 38 (1995) 25

Heino F.L. Meyer-Bahlburg, Anke A. Ehrhardt, Laura R. Rosen & Rhoda S. Gruen, *Prenatal Estrogens and the Development of Homosexual Orientation*, 31 Developmental Psychol. 12 (1995) 14

John Money, *Sin, Sickness, or Status? Homosexual Gender Identity and Psychoneuroendocrinology*, 42 Am. Psychologist 384 (1987), *reprinted in Psychological Perspectives on Lesbian and Gay Male Experiences* (Linda D. Garnets & Douglas C. Kimmel eds., 1993) 10, 14

John Money & Anke A. Ehrhardt, *Man & Woman, Boy & Girl: Differentiation and Dimorphism of Gender Identity from Conception to Maturity* (1972) 9

National Association of Social Workers, *Code of Ethics of the National Association of Social Workers* (1993) 5

National Association of Social Workers, *Policy Statement on Gay Issues* (1977) 4

TABLE OF AUTHORITIES—Continued

Page

National Association of Social Workers, *Policy Statement on Lesbian and Gay Issues* (1987) 4

National Association of Social Workers, *Policy Statement on Lesbian and Gay Issues* (1993) 4

National Association of Social Workers, *Policy Statement on Lesbian and Gay Issues* (1993), *reprinted in* National Association of Social Workers, *Social Work Speaks: NASW Policy Statements* (3d ed. 1994) 5, 16

Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Dev. 1025 (1992) 17

Letitia Anne Peplau, *Lesbian and Gay Relationships*, in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) 24

Letitia Anne Peplau, *Research on Homosexual Couples: An Overview*, 8 J. Homosexuality 3 (1982) 24

Letitia Anne Peplau & Hortensia Amaro, *Understanding Lesbian Relationships*, in *Homosexuality: Social, Psychological, and Biological Issues* (William Paul, James D. Weinrich, John C. Gonsiorek & Mary E. Hotvedt eds., 1982) 24

Letitia Anne Peplau & Susan D. Cochran, *Value Orientations in the Intimate Relationships of Gay Men*, 6 J. Homosexuality 1 (1990) 11

Richard Posner, *Sex and Reason* (1992) 19-20

Bernard F. Reiss, *Psychological Tests in Homosexuality*, in *Homosexual Behavior: A Modern Reappraisal* (Judd Marmor ed., 1980) 16-17

Gary Remafedi, James A. Farrow & Robert W. Deisher, *Risk Factors for Attempted Suicide in Gay and Bisexual Youth*, 87 Pediatrics 869 (1991) 25

Resolution of the American Psychiatric Association (Dec. 15, 1973), *reprinted in* 131 Am. J. Psychiatry 497 (1974) 3-4, 15

Results of Poll, S.F. Examiner, June 6, 1989, at A-19 12

TABLE OF AUTHORITIES—Continued

Page

Mary Jane Rotheram-Borus, Margaret Rosario, Ronan Van Rossem, Helen Reid & Roy Gillis, *Prevalence, Course, and Predictors of Multiple Problem Behaviors Among Gay and Bisexual Male Adolescents*, 31 Developmental Psychol. 75 (1995) 25

Glenda M. Russell, *The Psychological Effects of Amendment 2 on Lesbians, Gays and Bisexuals in Colorado* (forthcoming 1995) 27

William Schneider & I.A. Lewis, *The Straight Story on Homosexuality and Gay Rights*, Pub. Opinion, Feb.-Mar. 1984, at 16 22

Michael Shively & John P. De Cecco, *Components of Sexual Identity*, 3 J. Homosexuality 41 (1977), *reprinted in Psychological Perspectives on Lesbian and Gay Male Experiences* (Linda D. Garnets & Douglas C. Kimmel eds., 1993) 9

Charles Silverstein, *Man to Man: Gay Couples in America* (1981) 24

Charles Silverstein, *Psychological and Medical Treatments of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* (John C. Gonsiorek & James D. Weinrich eds., 1991) 20

William P. Snyder & Kenneth L. Nyberg, *Gays and the Military: An Emerging Policy Issue*, 8 J. Pol. & Mil. Soc. 71 (1980) 17

Special Issue, *Violence Against Lesbians and Gay Men: Issues for Research, Practice, and Policy*, 5 J. Interpersonal Violence 267 (1990) 22

Terry S. Stein, *Afterword to Section I*, 12 Rev. Psychiatry 127 (1993) 10, 19

Terry S. Stein, *Overview of New Developments in Understanding Homosexuality*, 12 Rev. Psychiatry 9 (1993) ..... *passim*

Cass R. Sunstein, *Homosexuality and the Constitution*, 70 Ind. L.J. 1 (1994) 7

Kara Swisher, *Area Firms Lauded on Gay Bias Policies*, Wash. Post, Oct. 11, 1994, at C2 17

TABLE OF AUTHORITIES—Continued

Page

Richard R. Troiden, *The Formation of Homosexual Identities*, 17 J. Homosexuality 43 (1989) 14

William J. Turner, *Homosexuality, Type 1: An Xq28 Phenomenon*, 24 Archives Sexual Behav. 109 (1995) 13

Frederick L. Whitam, Milton Diamond & James Martin, *Homosexual Orientation in Twins: A Report of 61 Pairs and Three Triplet Sets*, 22 Archives Sexual Behav. 187 (1993) 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-1039

ROY ROMER, as Governor of the State of Colorado, and the STATE OF COLORADO,

Petitioners,

v.

RICHARD G. EVANS, ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, PRISCILLA INKPEN, JOHN MILLER, the BOULDER VALLEY SCHOOL DISTRICT RE-2, the CITY AND COUNTY OF DENVER, the CITY OF BOULDER, the CITY OF ASPEN, and the CITY COUNCIL OF ASPEN,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of Colorado

---

BRIEF *AMICUS CURIAE* OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION, THE AMERICAN PSYCHIATRIC ASSOCIATION, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC., AND THE COLORADO PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF RESPONDENTS

INTEREST OF AMICI CURIAE [1]

The American Psychological Association, a scientific and professional organization founded in 1892, is the major association of psychologists in the United States. It has more than 120,000 members and affiliates, including the vast majority of psychologists holding doctoral

---

[1] The parties have consented to the filing of this brief. Their letters of consent are on file with the Clerk of the Court.

degrees from accredited universities in the United States. The Colorado Psychological Association, founded in 1946, represents more than 700 psychologists in the State of Colorado. The American Psychiatric Association, founded in 1844, is the Nation's leading organization of physicians specializing in psychiatry, with approximately 40,000 members. The National Association of Social Workers ("NASW") was established in 1955 as a nonprofit professional association. It is the largest social-work association in the world, with more than 160,000 members. Together, the four *amici* represent the majority of mental health care providers in this country.

Amici submit this brief to bring to this Court's attention the principal body of professional research pertinent to the questions posed in this case. Gay men and lesbians have been subjected to widespread discrimination based on prejudice, myths, and stereotypes.[2] *Amici* believe that this Court's consideration of this case will be aided by presentation of the literature demonstrating the baselessness of, and harms caused by, such discrimination.

Amici have publicly and formally urged the elimination of irrational discrimination against gay men and lesbians on many occasions. Beginning in 1975, the Council of Representatives of *amicus* American Psychological Association passed a series of resolutions urging that gay men and lesbians not be discriminated against in employment, housing, licensing, public accommodation, and child custody.[3] In 1988, the association approved a

[2] As used in this brief, the terms "gay" and "lesbian" describe men and women, respectively, whose sexual orientation is based on their primary sexual, emotional, or romantic attraction to members of their own sex. *See generally* John C. Gonsiorek & James D. Weinrich, *The Definition and Scope of Sexual Orientation*, in *Homosexuality: Research Implications for Public Policy* 1, 1-12 (John C. Gonsiorek & James D. Weinrich eds., 1991) [hereinafter *Homosexuality*]; Terry S. Stein, *Overview of New Developments in Understanding Homosexuality*, 12 Rev. Psychiatry 9, 10-12 (1993).

[3] *See, e.g.*, American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975); American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 32 Am. Psychologist 408, 432 (1977); American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 36 Am. Psychologist 552, 581 (1981).

resolution recognizing the "profound psychological consequences" of "hate crimes" motivated by anti-gay prejudice and urging governmental action to reduce such bias-related crimes and to eliminate "policies that perpetuate them."[4] The following year, the organization reaffirmed "its opposition to laws criminalizing consensual adult sexual behavior in private."[5] On August 22, 1993, the Association's Council of Representatives passed a resolution condemning Amendment 2 and any other state-law provisions purporting to bar legislation against sexual-orientation discrimination, declaring that "there is no basis for such discrimination and such discrimination is detrimental to mental health and the public good."[6]

Amicus American Psychiatric Association in 1973 formally declared that homosexuality "does not constitute a psychiatric disorder"[7] and "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[8] The organization opposed "all public and private discrimination against homosexuals in such areas as employment, housing, public accommodation,

[4] American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 43 Am. Psychologist 527, 528 (1988).

[5] American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 44 Am. Psychologist 1026, 1026 (1988).

[6] American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 49 Am. Psychologist 628, 628 (1994).

[7] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-II)* § 302.0, at 44 (6th prtg. 1974).

[8] *Resolution of the American Psychiatric Association* (Dec. 15, 1973), *reprinted in* 131 Am. J. Psychiatry 497 (1974).

and licensing" and urged the repeal of laws "singling out homosexual acts by consenting adults in private" and the enactment of laws affording "homosexual citizens the same protections now guaranteed to others on the basis of race, creed, color, etc.," citing "the pervasive discriminatory acts directed against this group and the arbitrary and discriminatory laws directed against homosexual behavior." [9] The American Psychiatric Association has opposed "exclusion and dismissal from the armed services on the basis of sexual orientation" and the placement on homosexuals of any special "burden of proof of judgment, capacity, or reliability"; [10] has opposed "the discriminatory exclusion of homosexual visitors and immigrants to the United States"; [11] and has supported "the right to privacy in . . . adult consensual sexual relations conducted in private." [12] In 1992, the organization reaffirmed that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities" and called for the repeal of laws penalizing private adult homosexual acts and the taking of action "to decrease the stigma related to homosexuality wherever and whenever it may occur." [13]

Amicus National Association of Social Workers has likewise formally opposed discrimination against gay men and lesbians. In 1977, the NASW adopted its first policy statement on gay issues,[14] which was subsequently revised and expanded in 1987 [15] and again in 1993.[16] As noted

[9] *Id.*

[10] 148 Am. J. Psychiatry 552 (1991).

[11] 148 Am. J. Psychiatry 1625 (1991).

[12] 149 Am. J. Psychiatry 724 (1992).

[13] 150 Am. J. Psychiatry 686 (1993).

[14] NASW, *Policy Statement on Gay Issues* (approved by NASW Delegate Assembly, 1977).

[15] NASW, *Policy Statement on Lesbian and Gay Issues* (approved by NASW Delegate Assembly, 1987).

[16] NASW, *Policy Statement on Lesbian and Gay Issues* (approved by NASW Delegate Assembly, 1993).

in the 1993 statement, the NASW *Code of Ethics* prohibits social workers from discriminating on the basis of sexual orientation in their professional roles.[17] The current NASW policy also affirms the association's commitment "to work toward full social and legal acceptance and recognition of lesbian and gay people." [18] Other professional organizations have adopted similar policies.[19]

STATEMENT OF FACTS

On November 3, 1992, a majority of Colorado voters approved a state constitutional amendment ("Amendment 2") that provides:

> NO PROTECTED STATUS BASED ON HOMOSEXUAL, LESBIAN, OR BISEXUAL ORIENTATION. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Sec-

[17] *See* NASW, *Code of Ethics of the National Association of Social Workers* (1993).

[18] NASW, *Policy Statement on Lesbian and Gay Issues* (approved by NASW Delegate Assembly, Aug. 1993), *reprinted in* NASW, *Social Work Speaks: NASW Policy Statements* 162, 163 (3d ed. 1994).

[19] *See, e.g.*, American Medical Association, *Reports of Board of Trustees*, Annual Meeting of the House of Delegates (June 1993) ("AMA policy is unequivocal—discrimination based on sexual orientation is improper and unacceptable by any part of the federation of medicine."); American Bar Association Report No. 8, House of Delegates (1989) (resolution "urg[ing] . . . governments to enact legislation prohibiting discrimination on the basis of sexual orientation in employment, housing and public accommodations").

tion of the Constitution shall be in all respects self-executing.

Colo. Rev. Stat., Const. art. II, § 30b (1994 Supp.).

The Amendment by its terms prevents the State or any of its political subdivisions from adopting any law protecting gay men, lesbians, and bisexuals against discrimination—apparently leaving the State and its subdivisions at liberty to adopt policies that *do* discriminate against gay men, lesbians, and bisexuals. Amendment 2 on its face does not apply neutrally to sexual orientation of all kinds (homosexual, bisexual, and heterosexual). It had the specific purpose and effect of amending a number of existing laws and policies that safeguarded Coloradans against discrimination based on sexual orientation by deleting those protections as applied to gay men, lesbians, and bisexuals. The Amendment, if enforced, also would preclude state and local public entities throughout Colorado from adopting any new remedies for anti-gay discrimination.

On November 12, 1992, respondents filed suit in Colorado state court under 42 U.S.C. § 1983, challenging the constitutionality of Amendment 2. The Denver District Court granted the respondents' motion for a preliminary injunction against the enforcement of Amendment 2. *See* Pet. App. E. In *Evans v. Romer*, 854 P.2d 1270 (Colo.), *cert. denied*, 114 S. Ct. 419 (1993), the Colorado Supreme Court affirmed the entry of the preliminary injunction, and held that Amendment 2 is subject to strict scrutiny because it "fences out" an independently identifiable class of persons and infringes upon their fundamental right to participate equally in the political process, a right protected by the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 1282-83, 1285 (citing *Reynolds v. Sims*, 377 U.S. 533 (1964), *Hunter v. Erickson*, 393 U.S. 385 (1969), and their progeny) (Pet. App. D-25 to D-27).

Following an eight-day trial, the district court permanently enjoined the enforcement of Amendment 2. *See* Pet. App. C. The Colorado Supreme Court again affirmed, holding that Amendment 2 was subject to strict scrutiny and was not narrowly tailored to serve any compelling governmental interest. *Evans v. Romer*, 882 P.2d 1335, 1350 (Colo. 1994) (Pet. App. B-24). Because the Colorado Supreme Court held that Amendment 2 infringes on a fundamental right and is therefore subject to strict scrutiny, it did not address respondents' argument that Amendment 2 should be invalidated even under the rational-basis test. *See id.* at 1341 n.3 (Pet. App. B-6 n.3).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves two legal standards. First, based on this Court's decision in *Hunter v. Erickson, supra*, the Colorado Supreme Court concluded that gay men, lesbians, and bisexuals constitute an "independently identifiable group" whose right to participate equally in the political processes of Colorado and its subdivisions would be infringed by the enforcement of Amendment 2. 882 P.2d at 1341, 1349-50 (Pet. App. B-7, B-24). An "identifiable group" has been described as one "defined in terms of some characteristic that is not ordinarily a legitimate basis for the allocation of political authority." Cass R. Sunstein, *Homosexuality and the Constitution*, 70 Ind. L.J. 1, 11 (1994).

Second, respondents argue that Amendment 2 can be invalidated under rational-basis review. *See City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985).[20] Under that standard, government action fails to pass muster not only if it lacks a "footing in the realities of the subject addressed by the legislation," *Heller v. Doe*, 113 S. Ct. 2637, 2643 (1993), but also if it is based predominantly on invidious prejudice or unreasoned

[20] *See also Pruitt v. Cheney*, 963 F.2d 1160, 1164-66 (9th Cir. 1991) (citing *Cleburne* and applying rational-basis review to Army regulations that discriminated on the basis of sexual orientation), *cert. denied*, 113 S. Ct. 655 (1992).

antipathy, or if it reflects blind adherence to unfounded stereotypes. *See Cleburne*, 473 U.S. at 446-47 (the "bare . . . desire to harm a politically unpopular group" is never a legitimate state interest (internal quotation marks omitted)); *id.* at 448-50 ("mere negative attitudes," "vague, undifferentiated fears," "irrational prejudice," and "'[p]rivate biases'" are not permissible bases for discriminatory state action (quoting *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984))); *Stanton v. Stanton*, 421 U.S. 7, 13-15 (1975) ("role-typing" and "old notions" cannot provide a rational basis for a discriminatory state law); *see also Zobel v. Williams*, 457 U.S. 55, 61-63 (1982); *USDA v. Moreno*, 413 U.S. 528, 534-35 (1973).

In this brief, *amici* present two bodies of scholarly literature that are relevant to the Court's consideration of these issues. We begin with a discussion of the latest scientific research on the nature of sexual orientation. This research firmly and consistently rejects the widespread assumptions that sexual orientation is the same as sexual conduct, that sexual orientation is freely chosen and readily subject to alteration, and that homosexual or bisexual orientation is a mental disorder causing impairment of psychological or social functioning.

We then discuss the literature on prejudice and discrimination against gay people. Prejudice directed against gay people as a group has led to harmful, and sometimes violent, acts of purposeful discrimination. Measured by a variety of standards—from research on public attitudes to statistics on hate crimes—lesbians and gay men remain subject to intense societal prejudice and discrimination, both public and private, largely growing out of inaccurate stereotypes and causing serious harm.

ARGUMENT

I. THE NATURE OF SEXUAL ORIENTATION.

A. The Definition Of Sexual Orientation.

Behavioral and social scientists commonly identify sexual orientation as one of several distinct but related components of human sexuality.[21] Sexual orientation refers to the tendency to experience erotic or romantic responses to men, women, or both, and the resulting sense of oneself.[22] Sexual orientation is generally classified as heterosexual, bisexual, or homosexual, with the range sometimes viewed as a continuum.[23] Sexual orientation has a number of aspects, including experiencing an ongoing attraction to persons of a particular gender; developing a private personal identity or self-concept as heterosexual, gay, lesbian, or bisexual; establishing a public identity based on sexual orientation; and identifying with a community of those who share the same sexual orientation.[24]

---

[21] Other components of human sexuality are biological sex, gender identity (the psychological sense of being male or female), and social sex role (adherence to cultural norms for masculine or feminine behaviors and attitudes). *See* John Money & Anke A. Ehrhardt, *Man & Woman, Boy & Girl: Differentiation and Dimorphism of Gender Identity from Conception to Maturity* 1-23 (1972); Michael Shively & John P. De Cecco, *Components of Sexual Identity*, 3 J. Homosexuality 41, 41-48 (1977), *reprinted in Psychological Perspectives on Lesbian and Gay Male Experiences* 84-87 (Linda D. Garnets & Douglas C. Kimmel eds., 1993) [hereinafter *Psychological Perspectives*]; Stein, *Overview*, *supra*, at 10-11.

[22] *See* Gonsiorek & Weinrich, *supra*, at 1-12; Shively & De Cecco, *supra*; Stein, *Overview*, *supra*, at 11; William Byne & Bruce Parsons, *Human Sexual Orientation: The Biologic Theories Reappraised*, 50 Archives Gen. Psychiatry 228, 229 (1993).

[23] *See, e.g.*, Shively & De Cecco, *supra*; Byne & Parsons, *supra*.

[24] *See* Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 Law & Sexuality 133, 134 (1991).

Sexual orientation is distinct from sexual conduct.[25] The fact that a person engages in same-sex sexual activity, other-sex sexual activity, both, or neither is not sufficient to determine his or her sexual orientation; indeed, "[a]ny definition of sexuality based solely on behavior is bound to be deficient and misleading."[26] Thus, many individuals who identify themselves as gay or lesbian, or who are predominantly attracted to members of the same sex, nonetheless engage in other-sex sexual behavior.[27] Similarly, many persons who identify themselves as heterosexual engage in same-sex sexual behavior.[28] As in the case of heterosexuals, some people who identify themselves as gay or lesbian do not engage in any sexual activity at all.[29] Some gay male and lesbian relationships, again like

---

[25] *See, e.g.*, John Money, *Sin, Sickness, or Status? Homosexual Gender Identity and Psychoneuroendocrinology*, 42 Am. Psychologist 384 (1987), *reprinted in Psychological Perspectives, supra*, at 133-34; Terry S. Stein, *Afterword to Section I*, 12 Rev. Psychiatry 127, 127 (1993); Byne & Parsons, *supra*, at 229.

[26] Douglas C. Haldeman, *The Practice and Ethics of Sexual Orientation Conversion Therapy*, 62 J. Consulting & Clinical Psychol. 221, 221 (1994); *see also* Edward O. Laumann, John H. Gagnon, Robert T. Michael & Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* 311-12 (1994). The Laumann study, based on a survey of a representative sample of American adults between the ages of 18 and 60 and conducted by the National Opinion Research Center at the University of Chicago, is hereinafter referred to as the "NORC Study."

[27] *See* NORC Study, *supra*, at 311-12.

[28] *See id.* at 310-12; Lynda S. Doll, Lyle R. Petersen, C.R. White, E.S. Johnson, J.W. Ward & The Blood Donor Study Group, *Homosexually and Nonhomosexually Identified Men Who Have Sex with Men: A Behavioral Comparison*, 29 J. Sex Res. 1, 1-14 (1992); Alfred C. Kinsey, Wardell B. Pomeroy & Clyde E. Martin, *Sexual Behavior in the Human Male* 623-30 (1948); Alfred C. Kinsey, Wardell B. Pomeroy, Clyde E. Martin & Paul H. Gebhard, *Sexual Behavior in the Human Female* 474-75 (1953).

[29] *See* NORC Study, *supra*, at 312 n.29; Milton Diamond, *Homosexuality and Bisexuality in Different Populations*, 22 Archives Sexual Behav. 291 (1992).

their heterosexual counterparts, do not include an overtly sexual component.[30]

B. The Prevalence Of Homosexual Orientation.

Few generalizable estimates exist of the prevalence of homosexual orientation in the United States.[31] Among existing surveys on sexuality, estimates differ substantially depending upon (among other things) whether the researcher inquires into same-sex sexual conduct, sexual orientation measured in terms of enduring attraction, or self-reported sexual identity. The renowned study of sexuality recently released by the National Opinion Research Center at the University of Chicago is illustrative. In that survey, 4.9% of men and 4.1% of women reported having had sex with a same-sex partner since age eighteen.[32] A larger proportion of respondents—7.7% of the men and 7.5% of the women—reported experiencing attraction to persons of their own sex, considering the prospect of sex with a same-sex partner appealing, or both.[33] When respondents were asked whether they thought of themselves as "heterosexual, homosexual, bisexual, or something else," 2.8% of the male respondents

---

[30] *See* Letitia Anne Peplau & Susan D. Cochran, *Value Orientations in the Intimate Relationships of Gay Men*, 6 J. Homosexuality 1 (1990).

[31] This scarcity is due in part to practical research problems, particularly many individuals' unwillingness to acknowledge homosexual orientation even in anonymous surveys, which compound the usual difficulties of eliciting accurate survey data on sexual matters. *See, e.g.*, NORC Study, *supra*, at 284 (noting that, due to social stigma attached to same-sex sexual activity and homosexual orientation, survey data on these subjects are "no doubt lower-bound estimates"); *id.* at 301 ("[T]he measurement of same-gender practices and attitudes is crude at best, with unknown levels of underreporting for each . . . .").

[32] *Id.* at 303; *see also* Robert E. Fay, Charles F. Turner, Albert D. Klassen & John H. Gagnon, *Prevalence and Patterns of Same-Gender Sexual Contact Among Men*, 243 Science 338 (1989).

[33] NORC Study, *supra*, at 305.

and 1.4% of the female respondents identified themselves as "homosexual" or "bisexual."[34] The Chicago researchers found a significantly higher prevalence of self-reported homosexual or bisexual identity (9.2% for men, 2.6% for women) among residents of the twelve largest American cities.[35]

C. The Development Of Sexual Orientation.

Current professional understanding is that the core feelings and attractions that form the basis for adult sexual orientation typically emerge by early adolescence.[36] For some people, adult homosexual orientation is predictable by early childhood.[37] Developmental precursors of

---

[34] *Id.* at 300-01, 305. Other studies have found a somewhat greater prevalence of self-reported gay or lesbian identity. *See* Stuart Elliott, *A Sharper View of Gay Consumers*, N.Y. Times, June 9, 1994, at D-1, D-17 (reporting results of nationwide Yankelovich Monitor survey finding that 5.7% of respondents identified themselves as gay or lesbian); Murray J. Edelman, *Understanding the Gay and Lesbian Vote in '92*, Pub. Persp., Mar.-Apr. 1993 (reporting exit poll research by the University of Connecticut's Roper Center, finding that between 2.4% and 3.0% of voters in 1992 elections reported that they were lesbian, gay, or bisexual); *Results of Poll*, S.F. Examiner, June 6, 1989, at A-19, A-20 (6% of nationwide sample self-reported as gay or lesbian in random telephone survey).

[35] *See* NORC Study, *supra*, at 305-07.

[36] *See* Alan P. Bell, Martin S. Weinberg & Sue Kiefer Hammersmith, *Sexual Preference: Its Development in Men and Women* (1981).

[37] *See* J. Michael Bailey & Kenneth J. Zucker, *Childhood Sex-Typed Behavior and Sexual Orientation: A Conceptual Analysis and Quantitative Review*, 31 Developmental Psychol. 43 (1995); Richard Green, *The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis*, 16 J. Psychiatry & L. 537 (1988); Richard Green, *The "Sissy Boy Syndrome" and the Development of Homosexuality* 370 (1987). Dr. Richard Green, a UCLA psychiatry professor specializing in human sexuality and psychosexual development in children, testified at trial. *See* Pet. App. C-17; Trial Tr. at 242-340.

adult homosexual orientation, however, have not been consistently identified for the population as a whole.[38]

A number of researchers have found familial patterns and biological correlates of adult homosexual orientation, suggesting that genetic, congenital, or anatomical factors may contribute to its development. For example, recent studies have indicated a linkage between certain aspects of DNA and sexual orientation.[39] Studies of identical twins have found that "heritabilities were substantial under a wide range of assumptions."[40] Another study, as yet unreplicated, reported differences between heterosexual and gay men in the volume of a cell group in the anterior hypothalamus, a brain structure that is involved in sexual behavior.[41] A study published earlier this year suggests that women who had been exposed to certain prenatal estrogens are more likely to be lesbian

---

[38] *See* Bell et al., *supra*, at 193-211.

[39] *See* Dean H. Hamer, Stella Hu, Victoria L. Magnuson, Nan Hu & Angela M.L. Pattatuci, *A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation*, 261 Science 321 (1993); *see also* William J. Turner, *Homosexuality, Type 1: An Xq28 Phenomenon*, 24 Archives Sexual Behav. 109 (1995).

[40] J. Michael Bailey & Richard C. Pillard, *A Genetic Study of Male Sexual Orientation*, 48 Archives Gen. Psychiatry 1089, 1089 (1991). Bailey and Pillard's study, which has since been replicated, found that, where one monozygotic ("identical") twin was gay, the other was also gay in 52% of the cases; where one dizygotic ("fraternal") twin was gay, the other was also gay in 22% of the cases; and where one brother by adoption was gay, his adoptive brother was gay in just 11% of the cases. *Id.*; *see also* J. Michael Bailey, Richard C. Pillard, Michael C. Neale & Yvonne Agyei, *Heritable Factors Influence Sexual Orientation In Women*, 50 Archives Gen. Psychiatry 217 (1993); J. Michael Bailey & Deana S. Benishay, *Familial Aggregation of Female Sexual Orientation*, 150 Am. J. Psychiatry 272 (1993); Frederick L. Whitam, Milton Diamond & James Martin, *Homosexual Orientation in Twins: A Report of 61 Pairs and Three Triplet Sets*, 22 Archives Sexual Behav. 187 (1993).

[41] *See* Simon LeVay, *A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men*, 253 Science 1034 (1991); *see also* Simon LeVay, *The Sexual Brain* (1993).

or bisexual.[42] Another study has suggested an "interactionist" model, under which "genetic factors can be conceptualized as indirectly influencing the development of sexual orientation." [43]

The available studies of gay experience indicate that same-sex attractions generally emerge by early or mid-adolescence.[44] "By the time boys and girls reach adolescence, their sexual preference is likely to be already determined, even though they may not yet have become sexually very active." [45] The scientific literature thus strongly indicates that sexual orientation is far from being a voluntary choice.[46]

D. Can Sexual Orientation Be Changed?

The research and clinical experience of *amici*'s members indicates that, once established, sexual orientation is resistant to change. Although there are some reports of therapy leading to changed sexual orientation, there is little evidence that treatment actually changes sexual attractions, as opposed to reducing or eliminating same-sex sexual *behavior*. Upon reviewing reports on "conversion therapy," one scholar concluded that—entirely aside from

[42] *See* Heino F.L. Meyer-Bahlburg, Anke A. Ehrhardt, Laura R. Rosen & Rhoda S. Gruen, *Prenatal Estrogens and the Development of Homosexual Orientation*, 31 Developmental Psychol. 12 (1995).

[43] Byne & Parsons, *supra*, at 237; *see also* Ray Blanchard, Kenneth J. Zucker, Susan J. Bradley & Caitlin S. Hume, *Birth Order and Sibling Sex Ratio in Homosexual Male Adolescents and Probably Prehomosexual Feminine Boys*, 31 Developmental Psychol. 22 (1995).

[44] *See* Richard R. Troiden, *The Formation of Homosexual Identities*, 17 J. Homosexuality 43, 43-73 (1989) (reviewing research literature); Bell *et al.*, *supra*, at 186-87.

[45] Bell *et al.*, *supra*, at 186.

[46] *See* Money, *supra*, *reprinted in Psychological Perspectives*, *supra*, at 131 ("The concept of voluntary choice is as much in error here as in its application to handedness or native language.").

the ethical concerns relating to any such therapy—there is no reliable evidence that "sexual orientation is amenable to redirection or significant influence from psychological intervention." [47]

E. Homosexuality Is Not A Disorder And Does Not Affect One's Ability To Contribute To Society.

The psychiatric, psychological, and social-work professions do not consider homosexual orientation to be a disorder.[48] More than twenty years ago, *amicus* American Psychiatric Association removed "homosexuality" from its list of mental disorders, stating that "homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." [49] In 1975, *amicus* American Psychological Association took the same position, and urged all mental health professionals to help dispel the stigma of mental illness that had long been associated with homosexual orientation.[50]

[47] Haldeman, *Practice and Ethics*, *supra*, at 224; *see* Douglas C. Haldeman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination*, in *Homosexuality*, *supra*, at 149, 149-60; *cf.* Richard A. Isay, *Dynamic Psychotherapy With Gay Men: Developmental Considerations*, 12 Rev. Psychiatry 85, 86 (1993) ("efforts to change core sexuality are futile").

[48] A mental disorder is "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (*e.g.*, a painful symptom) or disability (*i.e.*, impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* at xxi (1st prtg. 1994).

[49] *Resolution of the American Psychiatric Association* (Dec. 15, 1973), *reprinted in* 131 Am. J. Psychiatry 497 (1974). At trial, Dr. Judd Marmor, the former president of the American Psychiatric Association, testified about the process that led to the Association's decision to remove homosexuality from its list of mental disorders. *See* Trial Tr. at 390-98.

[50] *See* American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

Amicus National Association of Social Workers has a similar policy.[51]

The declassification of homosexual orientation as a mental disease reflects the results of extensive research, conducted over three decades, showing that homosexual orientation is not a psychological maladjustment.[52] A comprehensive literature on the subject demonstrates that "theories contending that the existence of differences between homosexuals and heterosexuals implies maladjustment are irresponsible, uninformed, or both."[53] It is well established that "homosexuality in and of itself bears no necessary relationship to psychological adjustment."[54] The social and other circumstances in which lesbians and gay men live, including exposure to widespread and intense prejudice and discrimination, often cause acute distress; but there is no reliable evidence that homosexual orientation *per se* impairs psychological functioning[55] or

---

[51] *See* NASW, *Policy Statement on Lesbian and Gay Issues* (approved by NASW Delegates Assembly, Aug. 1993), *reprinted in* NASW, *Social Work Speaks: NASW Policy Statements* 162, 162-65 (3d ed. 1994).

[52] *See* John C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *Homosexuality, supra*, at 115, 115-36; Bernard F. Reiss, *Psychological Tests in Homosexuality*, in *Homosexual Behavior: A Modern Reappraisal* 296 (Judd Marmor ed., 1980); Maureen Hart, Howard Roback, Bennett Tittler, Larry Weitz, Barbara Walston & Embry McKee, *Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature*, 39 J. Clinical Psychiatry 604 (1978).

[53] Gonsiorek, *Empirical Basis, supra*, in *Homosexuality, supra*, at 136.

[54] *Id.; see also* John C. Gonsiorek, *Results of Psychological Testing on Homosexual Populations*, 25 Am. Behavioral Sci. 385, 394 (1982); Reiss, *supra*, in *Homosexual Behavior: A Modern Reappraisal, supra*, at 296; Hart *et al., supra*.

[55] As one research psychologist explained:

> [M]any lesbians and gay men face difficult situations in their day-to-day lives as a result of the stigma attached to their sexual orientation. . . . [S]ome lesbians and gay men experience these situations as stressful and develop psychological problems as a consequence. In particular, the pressure to hide one's sexual orientation and the threat of physical assaults and other hate crimes can have many negative effects, including psychological and physical pain. However, empirical data do not indicate that lesbians and gay men, as a group, show a greater propensity to psychological dysfunction than do heterosexuals.

Herek, *Myths, supra*, at 145 (citing Mark Freedman, *Homosexuality and Psychological Functioning* (1971); Gonsiorek, *Results, supra*; Gonsiorek, *Empirical Basis, supra*, in *Homosexuality, supra*; Hart *et al., supra*; Evelyn Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. Projective Techs. 18 (1957); Reiss, *supra*, in *Homosexual Behavior: A Modern Reappraisal, supra*).

workplace functioning.[56]

The literature also undermines negative assumptions about gay men and lesbians as parents. One study commented: "The most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to the heterosexual parents and their children that were included in the studies."[57]

---

[56] *See, e.g.*, William P. Snyder & Kenneth L. Nyberg, *Gays and the Military: An Emerging Policy Issue*, 8 J. Pol. & Mil. Soc. 71, 77-79 (1980) (summarizing research and finding that gay people and heterosexuals score about the same in job stability and job satisfaction); Alan P. Bell & Martin S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* 141-48 (1978). Many major corporations and other organizations have implemented nondiscrimination policies as to sexual orientation. *See, e.g.*, Kara Swisher, *Area Firms Lauded on Gay Bias Policies*, Wash. Post, Oct. 11, 1994, at C2, C2 (reporting that 31 of metropolitan Washington's 50 largest publicly-held companies have such policies).

[57] G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers*, in *Homosexuality, supra*, at 197, 213; *see also, e.g.*, Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Dev. 1025 (1992); David K. Flaks, Ilda Ficher, Frank Masterpasqua & Gregory Joseph, *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 Developmental Psychol. 105 (1995); Richard Green, *Sexual Identity of 37 Children Raised by Homosexual or*

And being raised by gay parents does not appear to cause homosexual orientation.[58]

II. GAY PEOPLE HAVE LONG FACED INTENSE PREJUDICE AND DISCRIMINATION BASED ON IGNORANCE AND STEREOTYPES.

Sexual orientation (whether heterosexual, homosexual, or bisexual) not only is a fundamental facet of one's experience and sense of self, but has long had immense social, and therefore personal, consequences. In a society in which the vast majority of people are not gay, and often intensely disapprove of those who are,[59] homosexual orientation that is or might be readily known to other people has enormous social implications. Homosexual orientation often becomes the *predominant* social identifier of gay people.[60] Particularly in places in which

Transsexual Parents, 135 Am. J. Psychiatry 692 (1978); Martha Kirkpatrick, Catherine Smith & Ron Roy, *Lesbian Mothers and Their Children: A Comparative Study*, 51 Am. J. Orthopsychiatry 545 (1981).

[58] *See* Herek, *Myths*, *supra*, at 157-61 (summarizing research); Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, 18 J. Homosexuality 137 (1989), *reprinted in Psychological Perspectives*, *supra*, at 442; J. Michael Bailey, David Bobrow, Marilyn Wolfe & Sarah Mikach, *Sexual Orientation of Adult Sons of Gay Fathers*, 31 Developmental Psychol. 124, 124-29 (1995) (finding that, of the gay fathers' sons whose sexual orientations could be rated, more than 90% were heterosexual, and that the sons' sexual orientation was unrelated to the amount of time they had spent living with their fathers).

[59] *See infra* pp. 21-22.

[60] This has been a chief premise of the Department of Defense's rationale for excluding openly gay people from military service, namely, that *heterosexual* soldiers would be so disturbed by the presence of openly gay people that their presence would pose a threat to military order and morale. *See, e.g., Watkins v. United States Army*, 875 F.2d 699, 728 (9th Cir. 1989) (en banc) (Norris, J., concurring in the judgment) (Army argued that exclusion is justified because it avoids " 'tensions between known homosexuals and other members . . . who despise/detest homosexuality' " (quoting the Army's brief)), *cert. denied*, 498 U.S. 957 (1990).

openly gay people are few, a gay man or lesbian is likely to be thought of distinctly in terms of his or her sexual orientation, even in settings in which it is not demonstrably relevant.[61] As a result, "the experience of being gay, lesbian, [or] bisexual in American society today continues, to a large extent, to be defined by the requirement to cope with the negative effects of prejudice against homosexuality."[62]

A. History And Prevalence Of Prejudice And Discrimination Against Gay People.

The Denver District Court correctly observed that there is a long "history of discrimination against homosexuals." Pet. App. C-18. Gay people historically have been subject to intense prejudice and discrimination, both public and private. Extreme prejudice and even persecution were common in Europe from at least the Middle Ages.[63] Here in America, social prejudice and discrimination against lesbians and gay men have been widespread since colonial times.[64] Indeed, "lesbians and gay males have

[61] *See, e.g.*, Gregory M. Herek, *Stigma, Prejudice, and Violence Against Lesbians and Gay Men*, in *Homosexuality*, *supra*, at 60, 66-72 (describing process of anti-gay stereotyping); *id.* at 61 (discussing 1987 Roper poll in which 25% of respondents stated they would object strongly to working around gay people, and another 27% stated they would prefer not to do so).

[62] Stein, *Afterword*, *supra*, at 127.

[63] *See* Richard Posner, *Sex and Reason* 346 (1992) ("[H]omosexuals—who, like Jews, are despised more for what they are than for what they do—were frequently bracketed [with Jews] in medieval persecutions."); John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (1980). Thousands of gay people were exterminated along with Jews and Gypsies in Nazi concentration camps. *See, e.g.*, Heinz Heger, *The Men with the Pink Triangle* (David Fernbach trans., 1980).

[64] History Professor George A. Chauncey, Jr. of the University of Chicago testified at trial as to the history of discrimination against lesbians and gay men in America, beginning in colonial

been the object of some of the deepest prejudice and hatred in American society." [65]

In the early and mid-twentieth century, the mental health professions' adherence to the "illness model" of homosexual orientation—developed at least partly in an effort to displace the depravity/immorality model [66]—probably encouraged the development of bizarre, inhumane, and sometimes brutal "treatments" and "aversion therapies" for homosexual orientation.[67] In the 1940s and 1950s, gay people were often viewed and sometimes targeted as "sexual psychopaths." [68] And, until 1990, gay people were frequently excluded from the United States under an immigration statute denying

---

times. *See* Pet. App. C-17; Trial Tr. at 178-239; *see also, e.g.*, George A. Chauncey, Jr., *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (1994); Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (1991); Allan Berube, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (1990); John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* (1983); Jonathan Ned Katz, *Gay American History: Lesbians and Gay Men in the U.S.A.* (1976).

[65] Gary B. Melton, *Public Policy and Private Prejudice*, 44 Am. Psychologist 933, 934 (1989); *see* Posner, *supra*, at 291 ("In the United States . . . , not only is there a strong residue of hostility to homosexuals, but they labor under a series of legal disabilities.").

[66] *See* Berube, *supra*, at 136-37; Gonsiorek, *Empirical Basis, supra*, in *Homosexuality, supra*, at 116 ("homosexuality first evolved into a medical 'illness' in the late 19th or early 20th century depending on the country"); Stein, *Overview, supra*, at 14-15.

[67] *See* Haldeman, *Sexual Orientation Conversion Therapy, supra*, in *Homosexuality, supra*, at 152; Charles Silverstein, *Psychological and Medical Treatments of Homosexuality*, in *Homosexuality, supra*, at 106-11.

[68] *See* Berube, *supra*, at 258-59; *cf.* Samuel Brakel, John Parry & Barbara Weiner, *The Mentally Disabled and the Law* 739-43 (3d ed. 1985).

entry to persons "afflicted with psychopathic personality, or sexual deviation." [69]

Intense prejudice against lesbians and gay men remains prevalent in contemporary American society. Public opinion studies of attitudes towards lesbians and gay men indicate that, among large segments of the public, gay people are the subject of strong antipathy.[70] Verbal abuse is common.[71] Discrimination against gay people in such critical areas as employment and housing remains lawful in most jurisdictions, and appears to be widespread.[72]

---

[69] 8 U.S.C. § 1182(a)(4) (1988); *see Boutilier v. Immigration & Naturalization Serv.*, 387 U.S. 118, 122 (1967).

[70] In a representative nationwide survey of Americans conducted in late 1991 and early 1992, 59.9% of the respondents agreed with the statement, "I think lesbians are disgusting," and roughly the same percentage agreed when the question was asked regarding gay males. *See* Gregory M. Herek & John P. Capitanio, *"Some of My Best Friends": Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians*, 22 Personality & Soc. Psychol. Bull. (forthcoming 1995); Mary E. Kite, *When Perceptions Meet Reality: Individual Differences in Reactions to Lesbians and Gay Men*, in *Lesbian and Gay Psychology: Theory, Research, and Clinical Applications* 25-53 (Beverly Greene & Gregory M. Herek eds., 1994) [hereinafter *Lesbian and Gay Psychology*].

[71] *See* Kevin T. Berrill, *Anti-Gay Violence and Victimization in the United States: An Overview*, in *Hate Crimes: Confronting Violence Against Lesbians and Gay Men* 19, 20 (Gregory M. Herek & Kevin T. Berrill eds., 1992) [hereinafter *Hate Crimes*] (across 24 separate studies, an average of 80% of lesbian, gay, and bisexual respondents reported having been verbally harassed about their sexual orientation).

[72] A survey published by the National Gay and Lesbian Task Force Policy Institute of 20 employment discrimination studies conducted between 1980 and 1991 found that between 16% and 44% of lesbians and gay men had experienced employment discrimination. The survey's authors noted that discrimination also was common in such other areas as housing, public accommodations, and health care, and that fear of discrimination forces many gay men and lesbians to remain "closeted." M.V. Lee Badgett, Colleen Donnelly & Jennifer Kibbe, *Pervasive Patterns of Discrimination against Lesbians and Gay Men: Evidence from Surveys Across the*

BEST AVAILABLE COPY

High rates of specifically anti-gay violence or "hate crimes" have been consistently documented.[73]

B. The Nature Of Anti-Gay Prejudice.

Most heterosexuals' negative attitudes toward lesbians and gay men are not based on personal experience with gay people. Only one in three Americans has a friend, relative, or acquaintance who is known by them to be lesbian or gay. Anti-gay attitudes have been found to be significantly less common among that one-third of the population.[74] Several studies indicate that correction of

---

United States (1992) (on file with the American Psychological Association); *see also* Martin P. Levine, *Employment Discrimination Against Gay Men*, 9 Int'l Rev. Mod. Soc. 151 (1979); Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in the Work Force*, 9 Signs: J. Women Culture & Soc. 700 (1984).

[73] *See, e.g.*, Berrill, *supra*, in *Hate Crimes, supra*, at 20 (across 24 separate studies, an average of 44% of lesbian, gay, and bisexual respondents reported having been threatened with violence because of their sexual orientation); Gregory M. Herek, *Hate Crimes Against Lesbians and Gay Men: Issues for Research and Policy*, 44 Am. Psychologist 948, 949 (1989) (because of stigma, gay people under-report bias crimes motivated by anti-gay prejudice). *See generally Hate Crimes, supra*; Gary David Comstock, *Violence Against Lesbians and Gay Men* (1991); Special Issue, *Violence Against Lesbians and Gay Men: Issues for Research, Practice, and Policy*, 5 J. Interpersonal Violence 267-543 (1990).

[74] *See* Herek & Capitanio, *"Some of My Best Friends", supra*; Gregory M. Herek & John P. Capitanio, *Black Heterosexuals' Attitudes Toward Lesbians and Gay Men in the United States*, 32 J. Sex Res. 95 (1995); Gregory M. Herek & Eric K. Glunt, *Interpersonal Contact and Heterosexuals' Attitudes Toward Gay Men: Results from a National Survey*, 30 J. Sex Res. 239 (1993); Gregory M. Herek, *Beyond "Homophobia": A Social Psychological Perspective on Attitudes Toward Lesbians and Gay Men*, 10 J. Homosexuality 1, 6 (1984) (summarizing research). Dislike toward gay and lesbian people tends to be higher among people who believe that homosexual orientation is learned or chosen. *See* William Schneider & I.A. Lewis, *The Straight Story on Homosexuality and Gay Rights*, Pub. Opinion, Feb.-Mar. 1984, at 16-20, 59-60; Joseph E. Aguero, Laura Bloch & Donn Byrne, *The Relationships Among*

inaccurate assumptions about lesbians and gay men often leads to a reduction in antipathy.[75]

Likewise, research has shown that many people base their opinions about gay people on an entrenched set of negative assumptions. Both gay men and lesbians are often associated with cross-sex characteristics. "Additionally, significant numbers of individuals characterize male homosexuals as mentally ill, promiscuous, lonely, insecure, and likely to be child molesters, while lesbians have been described as aggressive and hostile toward men." [76]

These images represent crude stereotypes. For example, although gay men have been stigmatized with the allegation that they are disproportionately responsible for child sexual abuse,[77] there is no evidence of any positive correlation between homosexual orientation and child moles-

---

Sexual Beliefs, Attitudes, Experience, and Homophobia, 10 J. Homosexuality 95, 102 (1984).

[75] *See* Herek, *Beyond "Homophobia", supra*, at 6. At trial, Dr. Judd Marmor, the former president of the American Psychiatric Association, summarized the relationship between ignorance and prejudice: "prejudice is [being] down on something you're not up on." Trial Tr. at 388.

[76] Herek, *Beyond "Homophobia", supra*, at 9; *see also* Kite, *supra*, in *Lesbian and Gay Psychology, supra*, at 25-53; Emery S. Hetrick & A. Damien Martin, *Developmental Issues and Their Resolution for Gay and Lesbian Adolescents*, 14 J. Homosexuality 25, 27 (1987) (describing variety of social ills falsely attributed to gay men and lesbians by publicists, including high crime rates, low SAT scores, and anorexia) (citations omitted).

[77] *See, e.g.*, Trial Tr. at 681-82 (testimony of Dr. Carole Jenny) (describing the campaign for Amendment 2); *id.* at 1052 (cross-examination of Kevin Tebedo, a leader of Colorado for Family Values ("CFV"), the organization that spearheaded the campaign for Amendment 2) (asserting—on the basis of an unnamed psychological report—that homosexuals are 11 times more likely to molest children than heterosexuals); *id.* at 109 (describing CFV campaign materials).

tation.[78] Similarly, despite stereotypes to the contrary, gay men and lesbians often form committed relationships that share principal elements of heterosexual marital relationships,[79] that are based on deep emotional attachments,[80] and that endure for decades.[81]

C. Effects Of Prejudice And Discrimination.

When prejudice against lesbians and gay men takes the form of violence or discrimination, it can have such

[78] *See* Kurt Freund, Robin Watson & Douglas Rienzo, *Heterosexuality, Homosexuality, and Erotic Age Preference*, 26 J. Sex. Res. 107, 115 (1989); A. Nicholas Groth & H. Jean Birnbaum, *Adult Sexual Orientation and Attraction to Underage Persons*, 7 Archives Sexual Behav. 175, 180-81 (1978); Carole Jenny, Thomas A. Roesler & Kimberly L. Poyer, *Are Children At Risk for Sexual Abuse by Homosexuals?*, 94 Pediatrics 41 (1994).

[79] *See* Lawrence A. Kurdek, *The Nature and Correlates of Relationship Quality in Gay, Lesbian and Heterosexual Cohabiting Couples: A Test of the Individual Difference, Interdependence, and Discrepancy Models*, in *Lesbian and Gay Psychology, supra*, at 133-55; David Parr McWhirter & Andrew M. Mattison, *The Male Couple: How Relationships Develop* (1984); Letitia Anne Peplau & Hortensia Amaro, *Understanding Lesbian Relationships*, in *Homosexuality: Social, Psychological, and Biological Issues* 237-39 (William Paul, James D. Weinrich, John C. Gonsiorek & Mary E. Hotvedt eds., 1982) [hereinafter *Issues*]. Gay men and lesbians do not appear to differ from heterosexuals in their frequency of sexual intercourse. Researchers at the University of Chicago found "practically no difference between the rates of sex per month" for heterosexuals and for homosexuals and bisexuals: "The mean rates for [gay] men . . . are consistently, but not significantly, lower than the rates for [heterosexual] men. The rates for women hardly differ at all between the two groups." NORC Study, *supra*, at 317.

[80] *See* Letitia Anne Peplau, *Lesbian and Gay Relationships*, in *Homosexuality, supra*, at 179-83; Letitia Anne Peplau, *Research on Homosexual Couples: An Overview*, 8 J. Homosexuality 3, 5 (1982); Paul C. Larson, *Gay Male Relationships*, in *Issues, supra*, at 233-47.

[81] *See, e.g.*, McWhirter & Mattison, *supra*, at 285-86; Peplau, *Research on Homosexual Couples, supra*, at 5; Charles Silverstein, *Man to Man: Gay Couples in America* (1981).

tangible consequences as physical injury or lost employment. The harmful effects of prejudice, discrimination, and violence, however, are not limited to such bodily or pecuniary consequences. *Amici*'s members have long experience with the adverse psychological effects suffered by people who have an immediate and personal confrontation with anti-gay prejudice—whether in the form of verbal harassment from strangers, derision from family or coworkers, physical threats, or violent attack. The effects can include depression, a persistent sense of vulnerability, and efforts to rationalize the experience by viewing one's victimization as just punishment.[82] Gay people, like members of other groups that are subject to social prejudice, also frequently come to internalize society's negative stereotypes. Psychologists, psychiatrists, and social workers are particularly concerned about the harms that internalized social stigma can produce in gay adolescents who are newly becoming aware of their sexual orientation.[83]

[82] *See* Linda D. Garnets, Gregory M. Herek & Barrie Levy, *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 J. Interpersonal Violence 366 (1990), *reprinted in Psychological Perspectives, supra*, at 583; Herek, *Stigma, Prejudice, and Violence, supra*, in *Homosexuality, supra*, at 73-75; Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. Health & Soc. Behav. 38 (1995); *cf.* Morton Bard & Dawn Sangrey, *The Crime Victim's Book* (1986).

[83] *See, e.g.*, Gary Remafedi, James A. Farrow & Robert W. Deisher, *Risk Factors for Attempted Suicide in Gay and Bisexual Youth*, 87 Pediatrics 869 (1991); John C. Gonsiorek, *Mental Health Issues of Gay and Lesbian Adolescents*, 9 J. Adolescent Health Care 114 (1988); Scott L. Hershberger & Anthony R. D'Augelli, *The Impact of Victimization on the Mental Health and Suicidality of Lesbian, Gay, and Bisexual Youths*, 31 Developmental Psychol. 65 (1995); Mary Jane Rotheram-Borus, Margaret Rosario, Ronan Van Rossem, Helen Reid & Roy Gillis, *Prevalence, Course, and Predictors of Multiple Problem Behaviors Among Gay and Bisexual Male Adolescents*, 31 Developmental Psychol. 75 (1995); *see also Gay and Lesbian Youth* (Gilbert Herdt ed., 1989); Gilbert Herdt & Andrew Boxer, *Children of Horizons: How Gay and Lesbian Teens Are Leading a New Way Out of the Closet* (1993).

The stigma and ill treatment that attach merely to acknowledging homosexual orientation lead many gay people to remain "in the closet." [84] Concealing one's sexual orientation, or attempting to avoid association with other gay people, commonly tends to compound psychological distress. As explained in one recent review of the research literature,

> [p]sychological adjustment appears to be highest among men and women who are committed to their gay identity and do not attempt to hide their homosexuality from others. As with other stigmatized minorities, gay men and lesbians probably maintain self-esteem most effectively when they identify with and are integrated into the larger gay community. Conversely, people with a homosexual orientation who have not yet come out, who feel compelled to suppress their homoerotic urges, who wish that they could become heterosexual, or who are isolated from the gay community may experience significant psychological distress, including impairment of self-esteem. Chronically hiding one's sexual orientation can create a painful discrepancy between public and private identities, feelings of inauthenticity, and social isolation.[85]

The "daily need to hide an important aspect of . . . personal and social identity" operates as a "corrosive denial[] of self-respect and self-worth." [86] For some, social stigma

---

[84] *See* Bell & Weinberg, *supra*, at 62-68.

[85] Garnets *et al.*, *supra*, *reprinted in Psychological Perspectives*, *supra*, at 582-83 (citations omitted); *see also id.* at 593 n.2 (noting danger of blackmail); *United States v. Lallemand*, 989 F.2d 936, 940 (7th Cir. 1993) (Posner, J.) (same).

[86] Hetrick & Martin, *supra*, at 28; *see also* A. Damien Martin, *Learning to Hide: The Socialization of the Gay Adolescent*, 10 *Adolescent Psychiatry: Developmental & Clinical Studies* 52, 58 (Sherman C. Feinstein, John G. Looney, Allan Z. Schwartzberg & Arthur D. Sorosky eds., 1982); Alan K. Malyon, *The Homosexual Adolescent: Developmental Issues and Social Bias*, 60 J. Child Welfare 321, 327 (1981).

turns into feelings of personal inferiority or self-hatred.[87] Government measures that foster such stigma, as by pointedly foreclosing opportunities for political participation for gay people, only exacerbate those psychological harms.[88]

CONCLUSION

To the extent that Amendment 2 rests on baseless stereotypes about gay people, and reflects the sort of historically rooted antipathy still common in our society, it threatens to compound the serious problems gay people face as a result of irrational discrimination, and the decision of the Colorado Supreme Court should be affirmed.

Respectfully submitted,

RICHARD G. TARANTO
FARR & TARANTO
2445 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184
Counsel for Amicus American Psychiatric Association

CAROLYN I. POLOWY
General Counsel
NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.
750 First Street, N.E.
Washington, D.C. 20002
(202) 408-8600
Counsel for Amicus National Association of Social Workers, Inc.

PAUL M. SMITH *
JENNER & BLOCK
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 639-6000

JAMES L. MCHUGH, JR.
General Counsel
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street, N.E.
Washington, D.C. 20002
(202) 336-5500
Counsel for Amici American Psychological Association and Colorado Psychological Association

* Counsel of Record

---

[87] *See, e.g.*, Gonsiorek, *Mental Health Issues*, *supra*; John C. Gonsiorek & James R. Rudolph, *Homosexual Identity: Coming Out and Other Developmental Events*, in *Homosexuality*, *supra*, at 161, 166.

[88] *Cf.* Glenda M. Russell, *The Psychological Effects of Amendment 2 on Lesbians, Gays and Bisexuals in Colorado* (forthcoming 1995) (on file with the American Psychological Association); Tr. of Prelim. Inj. Hr'g, Jan. 12, 1993, at 27-29, 32-34 (testimony of respondent John C. Miller); Dirk Johnson, *Colorado Homosexuals Feel Betrayed*, N.Y. Times, Nov. 8, 1992, at 38.